

**Unofficial Draft Copy**

As of: April 16, 2012 (3:25pm)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act creating the state parks and recreation board; providing powers and duties; granting rulemaking authority; renaming the fish, wildlife, and parks commission; amending sections 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641, 23-2-657, 23-2-801, 23-2-806, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-306, 87-1-401, 87-1-622, and 87-4-432, MCA; repealing section 23-2-652, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**NEW SECTION. Section 1. State parks and recreation board**

**-- composition.** (1) There is a state parks and recreation board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

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(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of state parks and outdoor recreational resources administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9.

(4) A person appointed to the board must be informed or experienced in the conservation and protection of state parks, heritage resources, natural resources, tourism promotion and development, or outdoor recreation.

(5) A vacancy on the board must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least

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one member be an attorney does not apply.

(7) The administrator of the division that oversees state parks is the secretary of the board.

**NEW SECTION. Section 2. Powers and duties of board -- rulemaking -- meetings.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the board shall:

(a) set the policies of and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters in a way that promotes their importance to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, and boating;

(b) work with the commission to maintain hunting and angling opportunities on these lands and waters;

(c) establish the rules of the department governing the use of these properties, lands, and waters. The rules must be adopted in the interest of public health, public safety, and protection

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of property and public resources in regulating swimming, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, and sanitation. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(d) review and approve all acquisitions or transfers by the department of interest in these properties, lands, and waters;

(e) review and approve the budget of the department for the administration of these properties, lands, and waters prior to its transmittal to the budget office;

(f) review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000;

(g) work with local, state, and federal agencies to evaluate, integrate, coordinate, and promote recreational opportunities statewide; and

(h) encourage citizen involvement in management planning for these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places

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considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

**Section 3.** Section 2-15-3110, MCA, is amended to read:

**"2-15-3110. Livestock loss board -- purpose, membership, and qualifications.** (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, and wildlife, ~~and parks~~ commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

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- (b) livestock marketing, valuations, sales, or breeding associations;
- (c) the interaction of wolves with livestock and livestock mortality caused by wolves;
- (d) wildlife conservation;
- (e) administration; and
- (f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114 and 81-1-110 through 81-1-112."

{Internal References to 2-15-3110:  
2-15-3110 \* a 81-1-110 \* x}

**Section 4.** Section 2-15-3113, MCA, is amended to read:

**"2-15-3113. Additional powers and duties of livestock loss board.** (1) The livestock loss board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board of

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livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who

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receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, and wildlife, ~~and parks~~ commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

{ Internal References to 2-15-3113:

2-15-3110 a    2-15-3110 \* a    2-15-3112 x    2-15-3113 a  
2-15-3113 \* a    2-15-3114 x    81-1-110 x    81-1-110 \* x  
81-1-110 x    87-1-217x }

**Section 5.** Section 2-15-3401, MCA, is amended to read:

**"2-15-3401. Department of fish, wildlife, and parks -- head.** There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The



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director is the secretary of the fish and wildlife commission  
established in 2-15-3402."

{ Internal References to 2-15-3401:

2-17-803 x      17-7-161 x      23-2-301 a      23-2-403 a  
23-2-536 x      87-1-101 a      87-1-256x }

**Section 6.** Section 2-15-3402, MCA, is amended to read:

**"2-15-3402. Fish, and wildlife, ~~and parks~~ commission. (1)**

There is a fish, and wildlife, ~~and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie

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Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of fish, and wildlife, ~~and state parks~~ and ~~other outdoor~~ related recreational resources of this state. A person may not be appointed to the commission unless the person is informed or interested and experienced in the subject of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreation and the requirements for the conservation and protection of fish, wildlife, ~~parks,~~ and ~~outdoor~~ recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, and wildlife, ~~and parks~~ commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission."

{ Internal References to 2-15-3402:

23-2-301a      23-2-403 a      75-1-220 a      85-2-102 a  
87-1-101a }

**Section 7.** Section 2-15-3404, MCA, is amended to read:

**"2-15-3404. Fish, wildlife, and parks crimestoppers board.**

(1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

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- (i) a person within the department responsible for the enforcement of fish and wildlife laws;
- (ii) a member of a hunter's, angler's, or conservation group;
- (iii) a member who is actively engaged in agricultural production; and
- (iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, and wildlife, ~~and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

{ Internal References to 2-15-3404:  
87-5-602x }

**Section 8.** Section 23-1-101, MCA, is amended to read:

**"23-1-101. Purpose -- definitions.** (1) For the purpose purposes of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state, and

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providing for their use and enjoyment, ~~thereby and~~ contributing to the cultural, recreational, and economic life of the people and their health, the department of fish, wildlife, and parks ~~(hereinafter referred to as department)~~ is and board are hereby vested with the duties and powers ~~hereinafter~~ set forth in this part.

(2) For the purposes of this part, the following definitions apply:

(a) "Board" means the state parks and recreation board established in [section 1].

(b) "Commission" means the fish and wildlife commission established in 2-15-3402.

(c) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

(d) "Director" means the director of the department of fish, wildlife, and parks as provided in 2-15-3401."

{Internal References to 23-1-101:  
23-2-402 x 23-2-407 x}

**Section 9.** Section 23-1-102, MCA, is amended to read:

**"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ With the consent of the board, the department may:

(a) by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state

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parks, state recreational areas, state monuments, or state ~~historical~~ historic sites. ~~The department, with the consent of the commission, may~~

(b) acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2);

~~(2)(c) The department may~~ accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state; and

(d) lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part;

(2) ~~It~~ The department may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, ~~historical~~ historic sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state

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highway system. The department may designate lands under its control as state parks, state ~~historical~~ historic sites, state monuments, or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. ~~The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part."~~

{ Internal References to 23-1-102:

15-35-108x    15-35-108x    15-35-108 x    23-1-108 a  
23-2-404 a    70-30-102x }

**Section 10.** Section 23-1-106, MCA, is amended to read:

**"23-1-106. Rules -- penalties -- enforcement.** (1) The department and board may make rules governing the use, occupancy, and protection of the property under its control.

(2) ~~Any A~~ person who violates ~~any of the rules made by the department~~ this section or a rule established pursuant to ~~subsection (1)~~ this section is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to~~ A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the

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department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission board~~; and

(c) to report violations to the county attorney of the county in which they occur."

{ Internal References to 23-1-106: None. }

**Section 11.** Section 23-1-108, MCA, is amended to read:

**"23-1-108. Acquisition of certain state parks, monuments, or historical historic sites.** (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department ~~of fish, wildlife, and parks~~ by July 1 of the year preceding the convening of a legislative session.

(2) The ~~fish, wildlife, and parks commission board~~ shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state

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monuments, or state ~~historical~~ historic sites with the money contained in the parks account.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

{Internal References to 23-1-108: None.}

**Section 12.** Section 23-1-110, MCA, is amended to read:

**"23-1-110. Improvement or development of state park or fishing access site -- required public involvement -- rules. (1)**  
~~The fish, wildlife, and parks commission shall adopt rules establishing a policy whereby any~~ Any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;



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- (b) the capacity of the park or fishing access site for development;
- (c) environmental impacts associated with the improvement or development;
- (d) the long-range maintenance of the improvements;
- (e) the protection of natural, cultural, and historical park or fishing access site features;
- (f) potential impacts on tourism; and
- (g) site-specific modifications as they relate to the park or fishing access site system as a whole."

{ Internal References to 23-1-110:  
2-17-532x }

**Section 13.** Section 23-1-121, MCA, is amended to read:

**"23-1-121. Park rangers -- qualifications -- powers and duties.** (1) The department is authorized to establish a corps of park rangers and to select and appoint park rangers who must be qualified by their experience, training, skill, and interest in the protection, conservation, and stewardship of the natural and cultural resources and parks administered by the department.

(2) Park rangers shall enforce the laws of this state and the rules of the department and the ~~fish, wildlife, and parks commission board~~ that provide for the protection, conservation, and stewardship of the natural and cultural resources in the state parks system.

(3) Park rangers shall protect campers, picnickers, and other park users; keep the peace; supervise public use; and maintain public order in all units of the state parks system.

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(4) Park rangers shall perform all other duties prescribed by the department."

{ Internal References to 23-1-121:  
23-1-122a }

**Section 14.** Section 23-1-122, MCA, is amended to read:

**"23-1-122. Enforcement powers of park rangers and game wardens.** (1) Park rangers appointed pursuant to 23-1-121 and fish and game wardens appointed pursuant to 87-1-501 are authorized officers with the authority to enforce the laws and adopted rules relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7.

(2) An authorized officer may:

(a) arrest, in accordance with Title 46, chapter 6, any person within an area managed by the department upon probable cause to believe that the person has committed an offense against chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the ~~fish,~~

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~~wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

{Internal References to 23-1-122: None.}

**Section 15.** Section 23-2-301, MCA, is amended to read:

**"23-2-301. Definitions.** For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

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(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the

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line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

{Internal References to 23-2-301:

7-14-2615x    23-2-302 x    60-2-107 x    61-8-371 x  
61-8-371 x    61-8-371 x}

**Section 16.** Section 23-2-403, MCA, is amended to read:

**"23-2-403. Definitions.** As used in this part, the following definitions apply:

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~~(1) "Commission" means the fish, wildlife, and parks  
commission provided for in 2-15-3402.~~

(1) "Board" means the state parks and recreation board  
established in [section 1].

(2) "Department" means the department of fish, wildlife,  
and parks provided for in 2-15-3401."

{Internal References to 23-2-403: None.}

**Section 17.** Section 23-2-404, MCA, is amended to read:

**"23-2-404. Applicability.** This part applies to that portion  
of the Smith River waterway located in Meagher and Cascade  
Counties lying between the Camp Baker state ~~fishing access site~~  
park in Meagher County and the confluence of the Smith River with  
the Missouri River. This description does not prevent the  
department from naming or renaming areas pursuant to 23-1-102."

{Internal References to 23-2-404:  
23-2-407 x}

**Section 18.** Section 23-2-408, MCA, is amended to read:

**"23-2-408. Rulemaking authority.** The ~~commission~~ board has  
authority to provide for the administration of the Smith River  
waterway. The ~~commission~~ board may adopt rules to:

(1) regulate and allocate recreational and commercial  
floating and camping to preserve the biological and social  
benefits of recreational and commercial use of the Smith River  
waterway in its natural state. Recreational use may be restricted  
to preserve the experience of floating, fishing, and camping in a  
natural environment and to protect the river's fish, wildlife,

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water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and commission board:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway."

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{Internal References to 23-2-408:  
23-2-409x }

**Section 19.** Section 23-2-410, MCA, is amended to read:

**"23-2-410. Penalty -- enforcement.** (1) A person who violates a rule of the ~~commission~~ board adopted pursuant to this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500, or by imprisonment in a county jail for not more than 6 months, or ~~by both fine and imprisonment.~~

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department and the commission and board; and

(c) to report violations to the county attorney of the county in which they occur."

{Internal References to 23-2-410: None.}

**Section 20.** Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1]. For the purposes of this part, the



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board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4.

~~(1)~~(2) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(3) "Commission" means the fish and wildlife commission established in 2-15-3402. For the purposes of this part, the commission has jurisdiction over all waters that are not immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part 4.

~~(2)~~(4) "Department" means the department of fish, wildlife, and parks ~~of the state of Montana~~ established in 2-15-3401.

~~(3)~~(5) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(4)~~(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(5)~~(7) "Lienholder" means a person holding a security interest.

~~(6)~~(8) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or

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new and unused outboard motors for the purpose of sale or trade.

~~(7)~~(9) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(8)~~(10) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(9)~~(11) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(10)~~(12) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(11)~~(13) "Passenger" means each person carried on board a vessel other than:

- (a) the owner or the owner's representative;
- (b) the operator;
- (c) bona fide members of the crew engaged in the business

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of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(12)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(13)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(14)~~(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(15)~~(17) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(16)~~(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or

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performance of an obligation and is valid against third parties generally.

~~(17)~~(19) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(18)~~(20) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

~~(19)~~(21) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(22) "Waters of this state" means any waters within the territorial limits of this state."

{ Internal References to 23-2-502:

15-68-101 x    30-11-701 x    30-14-2501x    61-4-201 x  
61-4-222 x    61-4-402x }

**Section 21.** Section 23-2-506, MCA, is amended to read:

**"23-2-506. Enforcement.** (1) The department is a criminal

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justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this part and rules of the department, ~~and the fish, wildlife, and parks commission, and board~~; and
- (c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

{Internal References to 23-2-506: None.}

**Section 22.** Section 23-2-525, MCA, is amended to read:

**"23-2-525. Restricted areas.** (1) A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a

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person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The ~~fish, wildlife, and parks~~ commission and board may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

{ Internal References to 23-2-525:  
23-2-507x }

**Section 23.** Section 23-2-529, MCA, is amended to read:

**"23-2-529. Waterskis and surfboards.** (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an

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observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The ~~fish, wildlife, and parks~~ commission and board shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

{Internal References to 23-2-529: None.}

**Section 24.** Section 23-2-531, MCA, is amended to read:

**"23-2-531. Personal watercraft operation.** In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device

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as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3) (b) or when towing a waterskier from or to a dock or shore, at greater than no-wake speed within 200 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or river;

(b) at greater than the minimum speed necessary to operate a personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) on any surface waters restricted in whole or in part by rule of the ~~fish, wildlife, and parks~~ commission and board;

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

{ Internal References to 23-2-531: None. }

**Section 25.** Section 23-2-601, MCA, is amended to read:

**"23-2-601. Definition of terms.** As used in ~~23-2-601,~~  
~~23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621,~~  
~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through~~  
~~23-2-644~~ this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1].

~~(1)~~ (2) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

~~(2)~~ (3) "Certificate of title" means the document issued by



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the department of justice as prima facie evidence of ownership.

(4) "Commission" means the fish and wildlife commission established in 2-15-3402.

(3)(5) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4)(6) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5)(7) "New snowmobile" means a snowmobile that has not been previously sold to an owner.

(6)(8) "Operator" includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7)(9) "Owner" includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8)(10) "Person" means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9)(11) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10)(12) "Roadway" means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

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~~(11)~~(13) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.

(14) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(15) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and for the designation of open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(16) "Snowmobiler" means any person operating or riding a snowmobile."

{ Internal References to 23-2-601:

|            |             |              |            |
|------------|-------------|--------------|------------|
| 15-1-122 x | 23-2-601 a  | 23-2-614 x   | 23-2-614 x |
| 23-2-614 x | 23-2-631 x  | 23-2-631 x   | 23-2-631 x |
| 23-2-634 x | 23-2-634 x  | 23-2-641 a   | 23-2-641 a |
| 23-2-642 x | 23-2-642 x  | 23-2-642 x   | 23-2-644 x |
| 23-2-652 r | 30-11-701 x | 30-14-2501 x | 61-4-201 x |
| 61-4-222 x | 61-4-402 x} |              |            |

**Section 26.** Section 23-2-641, MCA, is amended to read:

**"23-2-641. Enforcement.** (1) With respect to the sale of any new snowmobile that is subject to the provisions of ~~23-2-601,~~  
~~23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621,~~

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~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through~~  
~~23-2-644~~ this part, the attorney general shall, upon the request  
of the department, sue for the recovery of the penalties provided  
in 23-2-642 and bring an action for a restraining order or  
temporary or permanent injunction against a person who sells or  
offers to sell a new snowmobile that does not satisfy the sound  
level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611,~~  
~~23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through~~  
~~23-2-635, and 23-2-641 through 23-2-644~~ this part.

(2) (a) The department is a criminal justice agency for the  
purpose of obtaining the technical assistance and support  
services provided by the board of crime control under the  
provisions of 44-4-301. Authorized officers of the department are  
granted peace officer status with the power:

- (i) of search, seizure, and arrest;
- (ii) to investigate activities in this state regulated by  
this part and rules of the department, board, and ~~the fish,~~  
~~wildlife, and parks~~ commission; and
- (iii) to report violations to the county attorney of the  
county in which they occur.

(b) Sheriffs and their deputies of the various counties of  
the state, the Montana highway patrol, authorized officers of the  
department, and the police of each municipality shall enforce the  
provisions of this part."

{ Internal References to 23-2-641:

|              |              |              |              |
|--------------|--------------|--------------|--------------|
| 15-1-122 * x | 23-2-601 *a  | 23-2-614 *x  | 23-2-614 * x |
| 23-2-614 *x  | 23-2-615 x   | 23-2-631 *x  | 23-2-631 * x |
| 23-2-631 *x  | 23-2-634 * x | 23-2-634 * x | 23-2-641 * a |
| 23-2-641 *a  | 23-2-642 * x | 23-2-642 * x | 23-2-642 * x |
| 23-2-644 *x  | }            |              |              |

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**Section 27.** Section 23-2-657, MCA, is amended to read:

**"23-2-657. Environmental review compliance -- exemption.**

(1) Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to ~~23-2-652~~ 23-2-653 through 23-2-655; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to ~~23-2-652~~ 23-2-653 through 23-2-655 or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award."

{Internal References to 23-2-657: None.}

**Section 28.** Section 23-2-801, MCA, is amended to read:

**"23-2-801. Definition.** ~~(1)~~ As used in this part, the following definitions apply:

(1) "Board" means the state parks and recreation board established in [section 1].

(2) "Commission" means the fish and wildlife commission established in 2-15-3402.

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~~(3)(a)~~ ~~"off-highway~~ "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

~~(2)~~ ~~Off-highway vehicle~~ (b) The term does not include:

~~(a)(i)~~ vehicles designed primarily for travel on, over, or in the water;

~~(b)(ii)~~ snowmobiles; or

~~(c)(iii)~~ except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands."

{ Internal References to 23-2-801:

15-68-101 x 23-1-128 x 30-11-701x 61-4-201 x  
61-4-222 x 61-4-402x }

**Section 29.** Section 23-2-806, MCA, is amended to read:

**"23-2-806. Enforcement.** (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are

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granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and
- (c) to report violations to the county attorney of the county in which they occur.

(3) Park rangers may not carry firearms in the execution of their duties."

{Internal References to 23-2-806: None.}

**Section 30.** Section 37-47-310, MCA, is amended to read:

**"37-47-310. Transfer or amendment of outfitter's license -- transfer of river-use days to new owner of fishing outfitter business.** (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

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(4)(a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, and wildlife, ~~and parks~~ commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks and recreation board pursuant to 23-2-408."

{Internal References to 37-47-310: None.}

**Section 31.** Section 75-1-220, MCA, is amended to read:

**"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter

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(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, and wildlife, ~~and parks~~ commission, as provided for in 2-15-3402, and the state parks and recreation board, as provided for in [section 11;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(4) "Cumulative impacts" means the collective impacts on



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the human environment within the borders of Montana of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(5) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan,

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or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

{Internal References to 75-1-220: None.}

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**Section 32.** Section 77-1-405, MCA, is amended to read:

**"77-1-405. Island parks established -- development limited.**

(1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks and recreation board established in [section 11];

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to

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Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997."

{Internal References to 77-1-405: None.}

**Section 33.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw

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water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the

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state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452,

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Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the

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department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.



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(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ Internal References to 85-2-102:

75-5-410 x    82-4-355 x    85-2-141x    85-2-340x }

**Section 34.** Section 87-1-101, MCA, is amended to read:

**"87-1-101. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks and recreation board provided for in [section 1].

~~(1)~~ (2) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

~~(2)~~ (3) "Department" means the department of fish, wildlife,

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and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~(4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~(5) "Warden" means a state fish and game warden."

{Internal References to 87-1-101: None.}

**Section 35.** Section 87-1-106, MCA, is amended to read:

**"87-1-106. Fish, wildlife, and parks offices.** The principal offices of the commission, board, and department shall be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water shall be furnished by the state of Montana."

{Internal References to 87-1-106: None.}

**Section 36.** Section 87-1-202, MCA, is amended to read:

**"87-1-202. Publication of orders and rules.** (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission or board setting seasonal hunting, fishing, trapping, and land use regulations must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on

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the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

- (i) use of the department's website;
- (ii) use of a telephone hotline number; or
- (iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

{Internal References to 87-1-202: None.}

**Section 37.** Section 87-1-209, MCA, is amended to read:

**"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase,

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lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the purchase price or \$300,000, whichever is less, must be deposited in the account established in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water rights:

- (a) for fish hatcheries or nursery ponds;
- (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, land or structures for the preservation of ~~historical~~

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historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

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(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the land or water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way

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pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey land and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

**87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters.** (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value,

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the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the ~~commission~~ board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of ~~historical~~ historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or board, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it



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considers necessary and advisable. The department, with the consent of the commission or board, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in

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succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or board at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or

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in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{Internal References to 87-1-209:

|            |            |             |             |
|------------|------------|-------------|-------------|
| 23-1-102 a | 23-1-126 x | 23-1-127 x  | 70-30-102 x |
| 87-1-218 x | 87-1-230 x | 87-1-242 x  | 87-1-242 x  |
| 87-1-301a  | 87-1-301 a | 87-1-303 x} |             |

**Section 38.** Section 87-1-218, MCA, is amended to read:

**"87-1-218. Notice of proposed land acquisitions.** (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or board for its consent.

(3) The notice must include:

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- (a) a description of the proposed acquisition, including acreage and the use proposed by the department;
- (b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;
- (c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and
- (d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or board and information on how the board of county commissioners may provide comment."

{ Internal References to 87-1-218:

87-1-209 a    87-1-209a    87-1-209a    87-1-209a }

**Section 39.** Section 87-1-301, MCA, is amended to read:

~~"87-1-301. (Temporary) Powers of commission. (1) Except as provided in subsection (7), the commission:~~

~~— (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law,~~

~~— (b) shall establish the hunting, fishing, and trapping rules of the department,~~

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~~(c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;~~

~~(d) must have the power within the department to establish wildlife refuges and bird and game preserves;~~

~~(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);~~

~~(f) shall review and approve the budget of the department prior to its transmittal to the budget office;~~

~~(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000, and~~

~~(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.~~

~~(2) The commission may adopt rules regarding the use and~~

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~~type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.~~

~~(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.~~

~~(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:~~

~~(i) separate deer licenses from nonresident elk combination licenses;~~

~~(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;~~

~~(iii) condition the use of the deer licenses; and~~

~~(iv) limit the number of licenses sold.~~

~~(b) The commission may exercise the rulemaking authority in subsection (4) (a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:~~

~~(i) for the biologically sound management of big game populations of elk, deer, and antelope;~~

~~(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and~~

~~(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.~~

~~(5) Subject to the provisions of 87-2-115, the commission~~

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~~may adopt rules establishing license preference systems to distribute hunting licenses and permits.~~

~~— (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~— (b) giving a qualifying landowner a preference in drawings.~~

~~As used in this subsection (5) (b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.~~

~~— (6) (a) The commission may adopt rules to:~~

~~— (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and~~

~~— (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.~~

~~— (b) The commission shall consider, but is not limited to consideration of, the following factors:~~

~~— (i) harvest of lions by resident and nonresident hunters;~~

~~— (ii) history of quota overruns;~~

~~— (iii) composition, including age and sex, of the lion harvest;~~

~~— (iv) historical outfitter use;~~

~~— (v) conflicts among hunter groups;~~

~~— (vi) availability of public and private lands; and~~

~~— (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~

~~— (7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the~~

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~~chemical elements of ammunition used for hunting. This does not prevent:~~

~~(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;~~

~~(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;~~

~~(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);~~

~~(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or~~

~~(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).~~

**87-1-301. (Effective March 1, 2012) Powers of commission.**

(1) Except as provided in ~~subsection~~ subsections (7) and (8), the commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department related to fish and wildlife as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) except as provided in [section 2], 23-2-502(1), and 87-1-303(3), shall establish the rules of the department



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governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in [section 2] and 87-1-209(4)(2) and (4);

(f) except as provided in [section 2], shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) except as provided in [section 2], shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and

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fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license preference

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systems to distribute hunting licenses and permits:

(i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

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(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(8) Pursuant to [section 2], the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9."

{Internal References to 87-1-301:

87-1-265 x      87-1-303a      87-1-304 x      87-1-304 x}

**Section 40.** Section 87-1-303, MCA, is amended to read:

**"87-1-303. Rules for use of lands and waters.** (1) Except as

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provided in [section 2], 87-1-307(7), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in [section 2], 23-2-502(1), and 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public.

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These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

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(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours."

{ Internal References to 87-1-303:

23-2-302 x    87-1-265 x    87-1-301 a    87-1-301a }

**Section 41.** Section 87-1-306, MCA, is amended to read:

**"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use prohibited.** (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission, board, or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats."

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{Internal References to 87-1-306: None.}

**Section 42.** Section 87-1-401, MCA, is amended to read:

**"87-1-401. Director to carry out policies.** The director shall carry out the policies of the commission and board and shall adopt rules authorized by law to implement those policies."

{Internal References to 87-1-401: None.}

**Section 43.** Section 87-1-622, MCA, is amended to read:

**"87-1-622. Forest management plan -- sustainable yield study required -- definition.** (1) The commission and board shall adopt a forest management ~~plan~~ plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and board shall review and redetermine the annual sustainable yield for lands under their jurisdiction



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at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

{ Internal References to 87-1-622:

87-1-201 x      87-1-621 x      87-1-621x      87-1-621 x  
87-1-621x }

**Section 44.** Section 87-4-432, MCA, is amended to read:

**"87-4-432. Alternative livestock advisory council -- appointment of members -- duties.** (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department

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of livestock;

(b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the alternative livestock advisory council shall serve staggered 2-year terms. A member may serve one additional consecutive 2-year term.

(4) The alternative livestock advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions."

{Internal References to 87-4-432: None.}

**NEW SECTION. Section 45. {standard} Repealer.** The following section of the Montana Code Annotated is repealed:  
23-2-652. Definitions.

{Internal References to 23-2-652: 23-2-652 \*r 23-2-657 \*a 23-2-657 \* a}

**NEW SECTION. Section 46. Name change -- directions to code commissioner.** (1) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the

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commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to fish and wildlife, the code commissioner is directed to change it to an appropriate reference to the fish and wildlife commission.

(2) Unless otherwise provided, wherever a reference to the fish, wildlife, and parks commission, meaning the commission established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks and recreation board.

NEW SECTION. **Section 47. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

NEW SECTION. **Section 48. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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NEW SECTION. **Section 49.** {standard} **Effective date.** [This  
act] is effective July 1, 2013.

- END -

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